

Bill No. SB 282

Barcode 641432    Comm: RCS    03/27/2006 04:42 PM

580-1757D-06

Proposed Committee Substitute by the Committee on Regulated Industries

1                                    A bill to be entitled

2                    An act relating to the Beverage Law; amending

3                    s. 561.14, F.S.; prohibiting vendor purchases

4                    and acquisitions of wine from direct shippers;

5                    providing for direct shipper license

6                    classification; creating s. 561.575, F.S.;

7                    providing for the direct shipment of wine from

8                    within or outside the state; requiring that a

9                    shipper hold a direct shipper's license;

10                   providing requirements for licensure; requiring

11                   that each container of wine shipped directly be

12                   labeled with a notice; requiring that a direct

13                   shipper file a surety bond with the Division of

14                   Alcoholic Beverages and Tobacco of the

15                   Department of Business and Professional

16                   Regulation; providing for attorney's fees and

17                   costs in an action to collect unpaid taxes;

18                   authorizing the division to suspend or revoke a

19                   direct shipper's license or impose fines;

20                   providing for criminal penalties; authorizing

21                   the division to adopt rules; amending ss.

22                   561.54 and 561.545, F.S.; specifying that

23                   provisions prohibiting the direct shipment of

24                   alcoholic beverages are inapplicable to wine

25                   shipped under s. 561.575, F.S.; amending s.

26                   561.57, F.S.; including Internet sales as sales

27                   construed to be actually made at the vendor's

28                   licensed place of business; exempting common

29                   carriers from certain report filing

30                   requirements; requiring common carriers to

31                   verify the age of persons receiving shipments;

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1 providing a defense to certain actions;  
2 providing an effective date.

3

4 Be It Enacted by the Legislature of the State of Florida:

5

6 Section 1. Section 561.14, Florida Statutes, is  
7 amended to read:

8 561.14 License and registration

9 classification.--Licenses and registrations referred to in the  
10 Beverage Law shall be classified as follows:

11 (1) Manufacturers licensed to manufacture alcoholic  
12 beverages and distribute the same at wholesale to licensed  
13 distributors and to no one else within the state, unless  
14 authorized by statute. Persons engaged in the business of  
15 distilling, rectifying, or blending spirituous liquors  
16 licensed under s. 565.03(1)(a)1. and (b) shall sell and  
17 distribute such beverages at wholesale only to other  
18 manufacturers and to licensed distributors and to no one else  
19 within this state.

20 (2) Distributors licensed to sell and distribute  
21 alcoholic beverages at wholesale to persons who are licensed  
22 to sell alcoholic beverages.

23 (3) Vendors licensed to sell alcoholic beverages at  
24 retail only. No vendor shall purchase or acquire in any manner  
25 for the purpose of resale any alcoholic beverages from any  
26 person not licensed as a vendor, manufacturer, bottler, or  
27 distributor under the Beverage Law. Purchases of alcoholic  
28 beverages by vendors from vendors shall be strictly limited to  
29 purchases between members of a pool buying group for which the  
30 initial purchase of the alcoholic beverages was ordered by a  
31 pool buying agent as a single transaction. No vendor shall be

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1 a member of more than one cooperative or pool buying group at  
2 any time. No vendor shall import, or engage in the  
3 importation of, any alcoholic beverages from places beyond the  
4 limits of the state. No vendor shall purchase or acquire wine  
5 from a direct shipper for the purpose of resale, except that a  
6 vendor may purchase or acquire wine from a manufacturer that  
7 is licensed as a distributor.

8 (4) Brokers or sales agents, whether resident or  
9 nonresident, licensed to sell, or to cause to be sold,  
10 shipped, and invoiced, alcoholic beverages to licensed  
11 manufacturers or licensed distributors, and to no one else, in  
12 this state. Such licensed brokers or sales agents, except as  
13 relates to malt beverages, only shall represent one or more  
14 primary American sources of supply, registered as such with  
15 the division, and may be compensated on a commission or  
16 remuneration basis and shall have no direct or indirect  
17 affiliation with any vendor licensed in this state. This  
18 license classification does not include manufacturers'  
19 representatives who are registered with the division under the  
20 provisions of ss. 564.045(1) and (2) and 565.095(1) and (2).

21 (5) Importers, whether resident or nonresident,  
22 licensed to sell, or to cause to be sold, shipped, and  
23 invoiced, alcoholic beverages to licensed manufacturers or  
24 licensed distributors, and to no one else, in this state;  
25 provided that the provisions of ss. 564.045 and 565.095 are in  
26 no way violated by such imports. Such licensed importers  
27 shall have no direct or indirect affiliation with any vendor  
28 licensed in this state. The holder of an importer's license  
29 shall be considered as having complied with the licensing  
30 requirements of a broker or sales agent. This license  
31 classification does not include manufacturers' representatives

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1 who are registered with the division under the provisions of  
2 ss. 564.045(1) and (2) and 565.095(1) and (2).

3 (6) Bottle clubs. It is the finding of the  
4 Legislature that bottle clubs are susceptible to a distinct  
5 and separate classification under the Beverage Law for  
6 purposes of regulating establishments permitting the  
7 consumption of alcoholic beverages. Any person operating a  
8 bottle club must be licensed pursuant to this chapter and may  
9 not hold any other alcoholic beverage license for such  
10 premises while licensed as a bottle club. Nothing in this  
11 subsection shall be construed to permit the purchase at  
12 wholesale or retail of alcoholic beverages for supplying or  
13 reselling to the patrons pursuant to a license issued under  
14 this chapter. Any such business shall be subject to all  
15 general, special, and local laws regulating vendors of  
16 alcoholic beverages. Bottle club licenses shall be issued at  
17 a fee of \$500 annually and shall be renewed in accordance with  
18 the schedule set out in ss. 561.26 and 561.27. This  
19 subsection shall include bottle clubs in existence on January  
20 1, 1991. The Division of Alcoholic Beverages and Tobacco is  
21 hereby authorized to adopt rules to carry out the purposes of  
22 this section.

23 (7) Exporters registered to sell alcoholic beverages.

24 (8) Direct shippers licensed under s. 561.575 to sell  
25 wine directly to a resident of this state who is at least 21  
26 years of age for that resident's personal use and not for  
27 resale.

28 Section 2. Section 561.575, Florida Statutes, is  
29 created to read:

30 561.575 Direct shipment of wine.--

31 (1) LICENSE REQUIRED.--Notwithstanding any other law

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1 to the contrary, a manufacturer of wine which is located  
 2 within or outside this state, holds a wine producer and  
 3 blender's basic permit issued in accordance with the Federal  
 4 Alcohol Administration Act, and obtains a direct shipper's  
 5 license may ship wine directly to a resident of this state who  
 6 is at least 21 years of age for that resident's personal use  
 7 and not for resale.

8 (2) LICENSURE QUALIFICATIONS.--

9 (a) Before shipping wine to a resident of this state,  
 10 a manufacturer must obtain a direct shipper's license by:

- 11 1. Filing an application with the division;
- 12 2. Paying an annual license fee of \$100; and
- 13 3. Providing to the division a certified copy of its  
 14 current wine manufacturer's license issued by this state or  
 15 another state and its current basic permit as a wine producer  
 16 and blender issued in accordance with the Federal Alcohol  
 17 Administration Act.

18 (b) Each licensee holding a direct shipper's license  
 19 shall:

20 1. Obtain and maintain a current license as provided  
 21 in this section.

22 2. Maintain a wine manufacturer's license issued by  
 23 this state or another state and a federal basic permit as a  
 24 wine producer issued in accordance with the Federal Alcohol  
 25 Administration Act.

26 (c) A direct shipper shall obtain and maintain a  
 27 current license as a primary American source of supply as  
 28 provided in s. 564.045.

29 (d) A direct shipper must comply with s. 564.05, which  
 30 limits the size of wine containers.

31 (e) An applicant for licensure as a direct shipper is

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exempt from the fingerprinting and license investigation requirements in ss. 561.17 and 561.18 if he or she holds a current active wine manufacturer's license in another state and has met qualifications substantially similar to, equivalent to, or greater than the qualifications required of applicants in this state. The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 specifying procedures for determining whether the applicant is qualified under this exemption.

(f) A direct shipper shall renew on or before August 1 of each year its license with the division by paying a renewal fee of \$100.

(3) JURISDICTION.--By obtaining a direct shipper's license, a licensee consents to the jurisdiction of the division, any other state agency, and the courts of this state concerning compliance with state laws.

(4) AGE-VERIFICATION REQUIREMENTS.--

(a) Each direct shipper shall use an age-verification process that is approved by the division to ensure that any sale made to a resident of this state is to a person at least 21 years of age. The process must be sufficient to accurately verify the age and identity of the purchaser.

(b) Each direct shipper shall ensure that the outside shipping label on each package is conspicuous and includes the following information:

1. This package contains alcohol.
2. An adult signature is required.
3. The recipient must be at least 21 years of age.

(c) If the direct shipper uses a common carrier to make, or cause to be made, deliveries within or from outside the state, the direct shipper shall require that the common

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carrier comply with the age-verification procedures required for deliveries made under this section. The direct shipper shall use any age-verification service provided by the common carrier which complies with these requirements.

(d) Each direct shipper licensee and common carrier shall require, prior to delivery, that the signature of the addressee or other person at least 21 years of age is obtained after presentation of a valid driver's license, an identification card issued under the provisions of s. 322.051, or, if the person is physically handicapped, a comparable identification card issued by another state which indicates the person's age, a passport, or a United States Uniformed Services identification card.

(e) A direct shipper licensee or common carrier who violates this section shall have a complete defense to any civil action therefor, except for any administrative action by the division, if, at the time the alcoholic beverage was sold, given, delivered, or transferred, the person falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage and the appearance of the person was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage and if the direct shipper licensee or common carrier acted in good faith and in reliance upon the representation and appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage and carefully checked one of the following forms of identification with respect to the person: a valid driver's license, an identification card issued under the provisions of s. 322.051, or, if the person is physically handicapped, a comparable identification card issued by another state which indicates

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the person's age, a passport, or a United States Uniformed Services identification card.

(5) TAXATION.--

(a) Each direct shipper shall pay monthly to the Department of Revenue all sales taxes and to the division all excise taxes due on sales to persons in this state for the preceding month. The amount of such taxes shall be calculated as if the sale took place in this state.

(b) File with the division a bond of \$5,000 as surety for the payment of taxes required under this chapter. However, the division may authorize a lesser bond if the volume of business done by the direct shipper is such that a bond of less than \$5,000 will be adequate to secure the payment of taxes assessed or authorized under the Beverage Law. The division may not accept a bond of less than \$1,000 and may require a bond to be increased to \$5,000. The surety bond currently on file with the division for a winery pursuant to s. 561.37 is deemed to comply with this requirement. Any applicant that has a surety bond for another license on file with the division that is in excess of \$5,000 shall be deemed to be in compliance with this requirement.

(6) REPORTING REQUIREMENTS.--Each direct shipper shall report to the division, by the 10th day of each month, on forms prescribed by the division:

(a) Whether any wine product was shipped into or within this state during the preceding month;

(b) The total amount of wine shipped into or within this state during the preceding month;

(c) The quantity and brands of wine shipped into or within this state during the preceding month;

(d) The amount of tax paid to the division and the



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1 Department of Revenue for the shipments of wine to residents  
2 of this state during the preceding month; and

3 (e) Any other information that the division determines  
4 is necessary to enforce this section.

5  
6 The report required by this paragraph is not required from a  
7 direct shipper licensee who files a monthly report pursuant to  
8 s. 561.55 which contains all the information required in  
9 paragraph (a). The division may prescribe the format for  
10 submission of this information in order to avoid duplicate  
11 filings.

12 (7) RECORDKEEPING REQUIREMENT.--Each direct shipper  
13 shall keep complete, accurate, and separate records of wine  
14 products sold and shipped to this state for at least 3 years.

15 (8) AUDIT REQUIREMENTS.--

16 (a) Each direct shipper shall permit the division to  
17 audit the records of the direct shipper upon request.

18 (b) The cost of performing an audit under paragraph  
19 (2)(i) shall be assigned to the division unless the licensee  
20 is found to be in material violation of this section, in which  
21 case the cost of the audit shall be assigned to the licensee.  
22 A direct shipper shall pay all attorney's fees and costs in  
23 any action to collect unpaid taxes.

24 (9) PENALTIES.--

25 (a) In addition to any other penalty provided in the  
26 Beverage Law, the division may suspend or revoke a direct  
27 shipper license or impose fines on the direct shipper licensee  
28 in an amount not to exceed \$2,500 per violation for any  
29 violation of this section.

30 (b) A direct shipper licensee that knowingly and  
31 intentionally ships, or causes to be shipped, wine to any

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person in this state who is under 21 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any common carrier, permit carrier, or other commercial conveyance that knowingly and intentionally delivers wine directly to any person in this state who is under 21 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(10) RULEMAKING AUTHORITY.--The division may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

Section 3. Section 561.54, Florida Statutes, is amended to read:

561.54 Certain deliveries of beverages.--

(1) It is unlawful for common or permit carriers, operators of privately owned cars, trucks, buses, or other conveyances or out-of-state manufacturers or suppliers to make delivery from without the state of any alcoholic beverage to any person, association of persons, or corporation within the state, except to qualified manufacturers, distributors, and exporters of such beverages so delivered and to qualified bonded warehouses in this state.

(2) Any licensee aggrieved by a violation of this section may bring an action in any court of competent jurisdiction to recover for the state all moneys obtained by common carriers or permit carriers; obtained by operators of privately owned cars, trucks, buses, or other conveyances; or obtained by out-of-state manufacturers or suppliers as a result of the delivery of alcoholic beverages in violation of this section, and may obtain a declaratory judgment that an

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1 act or practice violates this section and enjoin any person  
 2 from violating this section. In addition to such relief, the  
 3 court may order the confiscation and destruction of any  
 4 alcoholic beverages delivered in violation of this section.  
 5 In assessing damages, the court shall enter judgment against a  
 6 defendant for three times the amount of the delivery charges  
 7 proved or the fair market value of merchandise unlawfully  
 8 brought into the state. Payment or satisfaction of any  
 9 judgment under this section, other than for costs and  
 10 attorney's fees, shall be made in its entirety to the state.  
 11 In any successful action under this section, the court shall  
 12 award the plaintiff costs and reasonable attorney's fees.

13 (3) This section does not apply to the shipment of  
 14 wine by a licensed direct shipper to a person 21 years of age  
 15 or older in accordance with s. 561.575.

16 Section 4. Section 561.545, Florida Statutes, is  
 17 amended to read:

18 561.545 Certain shipments of beverages prohibited;  
 19 penalties; exceptions.--The Legislature finds that the direct  
 20 shipment of alcoholic beverages by persons in the business of  
 21 selling alcoholic beverages to residents of this state in  
 22 violation of the Beverage Law poses a serious threat to the  
 23 public health, safety, and welfare; to state revenue  
 24 collections; and to the economy of the state. The Legislature  
 25 further finds that the penalties for illegal direct shipment  
 26 of alcoholic beverages to residents of this state should be  
 27 made adequate to ensure compliance with the Beverage Law and  
 28 that the measures provided for in this section are fully  
 29 consistent with the powers conferred upon the state by the  
 30 Twenty-first Amendment to the United States Constitution.

31 (1) Any person in the business of selling alcoholic

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1 beverages who knowingly and intentionally ships, or causes to  
2 be shipped, any alcoholic beverage from an out-of-state  
3 location directly to any person in this state who does not  
4 hold a valid manufacturer's or wholesaler's license or  
5 exporter's registration issued by the Division of Alcoholic  
6 Beverages and Tobacco or who is not a state-bonded warehouse  
7 is in violation of this section.

8           (2) Any common carrier or permit carrier or any  
9 operator of a privately owned car, truck, bus, or other  
10 conveyance who knowingly and intentionally transports any  
11 alcoholic beverage from an out-of-state location directly to  
12 any person in this state who does not hold a valid  
13 manufacturer's or wholesaler's license or exporter's  
14 registration or who is not a state-bonded warehouse is in  
15 violation of this section.

16           (3) Any person found by the division to be in  
17 violation of subsection (1) shall be issued a notice, by  
18 certified mail, to show cause why a cease and desist order  
19 should not be issued. Any person who violates subsection (1)  
20 within 2 years after receiving a cease and desist order or  
21 within 2 years after a prior conviction for violating  
22 subsection (1) commits a felony of the third degree,  
23 punishable as provided in s. 775.082, s. 775.083, or s.  
24 775.084.

25           (4) Any common carrier or permit carrier, or any  
26 operator of a privately owned car, truck, bus, or other  
27 conveyance found by the division to be in violation of  
28 subsection (2) as a result of a second or subsequent delivery  
29 from the same source and location, within a 2-year period  
30 after the first delivery shall be issued a notice, by  
31 certified mail, to show cause why a cease and desist order

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1 should not be issued. Any person who violates subsection (2)  
2 within 2 years after receiving the cease and desist order or  
3 within 2 years after a prior conviction for violating  
4 subsection (2) commits a felony of the third degree,  
5 punishable as provided in s. 775.082, s. 775.083, or s.  
6 775.084.

7 (5) This section does not apply to:

8 (a) The direct shipment of sacramental alcoholic  
9 beverages to bona fide religious organizations as authorized  
10 by the division; ~~or to~~

11 (b) The possession of alcoholic beverages in  
12 accordance with s. 562.15(2); ~~or-~~

13 (c) The shipment of wine by a licensed direct shipper  
14 to a person 21 years of age or older in accordance with s.  
15 561.575.

16 Section 5. Subsections (1) and (6) of section 561.57,  
17 Florida Statutes, are amended to read:

18 561.57 Deliveries by licensees.--

19 (1) Vendors shall be permitted to make deliveries away  
20 from their places of business of sales actually made at the  
21 licensed place of business; provided, telephone, Internet, or  
22 mail orders received at vendor's licensed place of business  
23 shall be construed as a sale actually made at the vendor's  
24 licensed place of business.

25 (6) Common carriers are not required to have vehicle  
26 permits to transport alcoholic beverages. This section does  
27 not prohibit any common carrier or any licensee from using a  
28 common carrier to deliver alcoholic beverages within the  
29 state. Deliveries of alcoholic beverages by common carriers,  
30 licensees, or their employees or agents are exempt from the  
31 reporting requirements in s. 562.20. Each common carrier

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acting as a designated agent for delivery shall verify that  
any person receiving alcoholic beverages is at least 21 years  
of age upon the delivery of such alcoholic beverages, as  
prescribed in division rules. Compliance with the prescribed  
age-verification requirements gives the common carrier and the  
licensee, or their employees or agents, a complete defense to  
selling, giving, or serving alcoholic beverages to any person  
younger than 21 years of age.

Section 6. This act shall take effect upon becoming a  
law.

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